



JJGJr.:05-01

Paper **6**

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**MAR 22 2002**

**OFFICE OF PETITIONS**

In re Application of  
Hunter-Cevera, et al  
Application No. 10/067,613  
Filed: 4 February, 2002  
Attorney Docket No. 014939-001600US

: DECISION REFUSING  
: STATUS UNDER  
: 37 C.F.R. §1.47(a)  
:

This is a decision on the petition under 37 C.F.R. §1.47(a),<sup>1</sup> filed on 7 March, 2002, and partially (but incompletely) supplemented via FAX on 21 March, 2002.

The petition is **DISMISSED**.

Any request (and fee) for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision.

Any response should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)" and may include an oath or declaration executed by the inventor.

Failure to respond within the time set forth above will result in abandonment of the application.

### BACKGROUND

The record indicates:

- the application was filed on 4 February, 2002, without an executed oath or declaration for the first- and fifth-inventors, respectively, Jennifer C. Hunter-Cevera and Nancy McKinney;

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<sup>1</sup> The regulations at 37 C.F.R. §1.47 provide:

**§ 1.47 Filing when an inventor refuses to sign or cannot be reached.**

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

(c) The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the *Official Gazette*. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).

[47 Fed. Reg. 41275, Sept. 17, 1982, effective Oct. 1, 1982; 48 Fed. Reg. 2709, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Nov. 7, 2000]

- before a Notice to File Missing Parts of Application was mailed, Petitioner filed the instant petition and fee;<sup>2</sup>
- Petitioner was asked via telephone on 21 March, 2002, to evidence transmittal of the entire application to the non-signing inventors, and on 21 March, 2002, Petitioner supplemented the record with copies of those transmittal letters (but no delivery disposition documents);
- Petitioner was asked via telephone on 21 March, 2002, to provide the required statement of the last known residential addresses of the non-signing inventors, however, while Petitioner indicated that those materials would be forwarded immediately over Counsel's signature, those materials were not received by the Office.<sup>3</sup>

### ANALYSIS

A copy of the application papers must be sent to the last known address of the non-signing inventor with a request that he/she sign the declaration for the patent application. A forwarding address should be requested, if the papers are returned, and other attempts to locate the inventor, e.g. through e-mail or the telephone continue to fail, then applicant will have established that the inventor cannot be reached.

Alternatively, an oath or declaration for the patent application in compliance with 37 C.F.R. §§1.63 and 1.64 must be presented.

The declaration must set forth the inventor's residence, citizenship and post office address. An oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64 signed by the Rule 1.47 applicant is required.<sup>4</sup>

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents and Trademarks  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23  
2201 South Clark Place  
Arlington, VA 22202

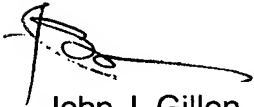
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<sup>2</sup> Although Petitioner failed to pay the late-filing surcharge pursuant to 37 C.F.R. §1.16(e) of \$65.00 for a small entity, however, Petitioner has authorized such necessary fees to be charged to Deposit Account 20-1430, and those fees have been charged.

<sup>3</sup> The submission should include: (a) a declaration of the registered attorney(s)/agent(s) and other authority(ies) attempting the contact, outlining the efforts and the results; and (b) documentation (such as a copy of the transmittal letter(s) and delivery disposition document(s) supporting that (those) declaration(s).

<sup>4</sup> See: MPEP 409.03(b).

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

A handwritten signature in black ink, appearing to read "John J. Gillon, Jr.", with a long horizontal stroke extending to the right.

John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy